No. 120.

By of Dillon, Pierce & Duncan

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Supreme Court of the United States.

OCTOBER TERM, 1888.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, *Plaintiff in Error,*
vs.
CHARLES PAUL.
No. 120.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

Brief for Plaintiff in Error.

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BRIEF FOR PLAINTIFF IN ERROR.

Statement.

This action was begun in a Justice's Court in Saline Township, Saline County, Arkansas, by Charles Paul against the The St. Louis, Iron Mountain and Southern Railway Company, a corporation under the laws of Arkansas.

The defendant appealed from the judgment of the Justice in favor of the plaintiff, and there was a trial *de novo* in the Circuit Court of Saline County. Plaintiff alleged (Tr., p. 3) that on March 28, 1894, he hired to defendant as a laborer at the wages of $1.25 per day and performed 30½ days' labor, when, on May 4, 1894, he was discharged by the defendant, there being then due him on account of his wages, less certain credits,

the sum of $21.80. He further alleged that defendant failed to pay him said sum on said last-named day and had refused to pay the same up to the time suit was brought, and that there had been 39 working days since he was discharged for which "by law he is entitled to the sum of $1.25 per day as a penalty for said failure to pay on said day of discharge."

The Act under which the penalty is claimed is as follows:

[Laws of Arkansas, 1889, page 76.]

ACT LXI.

AN ACT to Provide for the Protection of Servants and Employes of Railroads.

SECTION 1. Liabilities of railroads or other corporations in case of discharge of employes for withholding their wages; *proviso.*
2. Avoidance of payment by servant or employe.
3. How employe may proceed in case of wrongful discharge.
4. Act in force from passage.

Be it enacted by the General Assembly of the State of Arkansas:

SECTION 1. Whenever any railroad company or any company, corporation or person engaged in the business of operating or constructing any railroad or railroad bridge, or any contractor or sub-contractor engaged in the construction of any such road or bridge, shall discharge, with or without cause, or refuse to further employ any servant or employe thereof, the unpaid wages of any such servant or employe, then earned at the contract rate, without abatement or deduction, shall be, and become due and payable on the day of such discharge, or refusal to longer employ; and if the same be not paid on such day then, as a penalty for such non-payment, the wages of such servant or employe shall continue at the same rate until paid. *Provided*, Such wages shall not continue more than sixty days, unless an action therefor shall be commenced within that time.

SEC. 2. That no such servant or employe who secrets or absents himself to avoid payment to him, or

refuses to receive the same when fully tendered, shall be entitled to any benefit under this act for such time as he so avoids payment.

SEC. 3. That any such servant or employe whose employment is for a definite period of time, and who is discharged without cause before the expiration of such time may, in addition to the penalties prescribed by this act, have an action against any such employer for any damages he may have sustained by reason of such wrongful discharge, and such action may be joined with an action for unpaid wages and penalty.

SEC. 4. That this act shall take effect and be in force from and after its passage.

Approved March 25, 1889.

Defendant demurred to so much of the complaint as sought to recover the penalty (Tr., pp. 3, 4) on the ground that the act under which it was claimed is violative of Articles 5 and 14 of the amendments to the Constitution of the United States and of certain sections of the Constitution of the State of Arkansas. This demurrer was overruled (Tr., p. 6) and defendant filed an answer (Tr., pp. 4, 5), in which it admitted that it owed plaintiff $22.50, and interest thereon from the date of his discharge on account of his wages, and offered to confess judgment for that sum. Defendant further answered that plaintiff when discharged directed that his time check be sent to the agent at Benton for payment, which was done; that he did not give defendant an opportunity to pay him, but kept out of the way until the day before he brought suit, when defendant did not refuse to pay him his wages, but required him to be identified as the party to whom the wages were due, which was reasonable and necessary; and in Paragraph III. alleged that plaintiff was not entitled to recover any amount as a penalty for the reason that the Act of March 25, 1889, under which the penalty was claimed, is unconstitutional and void, in that it is

violative of Articles 5 and 14 of the amendments to the Constitution of the United States and of certain sections of the Constitution of Arkansas.

Plaintiff demurred to the third paragraph of the answer and the demurrer was sustained (Tr., p. 6).

The case was heard by the Court sitting as a jury—the parties having waived a trial by jury—and the Court found that plaintiff was " entitled to recover the sum of $21.80, his debt, and the further sum of $48.75 as a penalty for failure to pay him at the time of his discharge, being at the rate of $1.25 per day from the date of his discharge until the 18th day of June, the date of the commencement of this suit " (Tr., p. 7). Judgment was accordingly entered against the defendant for $70.55 with costs (Tr., p. 7).

Defendant appealed to the Supreme Court of the State of Arkansas from the action of the Circuit Court in overruling defendant's demurrer to the complaint and in sustaining plaintiff's demurrer to the answer. That Court followed the principle announced by it in *Leep vs. St. Louis, I. M. & S. Ry. Co., 58 Ark., 407*, in which the constitutionality of the same statute was passed upon. It was there held that *while the Act was void and unconstitutional as to individuals it was constitutional as to railroad companies as being an exercise of the power of the Legislature to amend corporate charters.*

The judgment of affirmance which was entered (Tr., p. 9) is now brought here for review by writ of error.

Assignments of Error.

I.

The Court erred in holding that the act of the General Assembly of the State of Arkansas, entitled "An Act to provide for the protection of servants and employees of railroads," approved March 25th, 1889 (and found on page 76 of the Pamphlet Acts of the State of Arkansas for 1889), was not repugnant to that clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

II.

That the Court erred in holding that said act was not repugnant to that clause of the Fourteenth Amendment to the Constitution of the United States which declares that "no State shall * * * deny to any person within its jurisdiction the equal protection of the laws."

III.

That the Court erred in holding that said act was not repugnant to that part of the Fifth Amendment to the Constitution of the United States which provides that "no person shall be deprived of life, liberty or property without due process of law."

IV.

That the Court erred in holding that said act was not repugnant to that clause of the Fifth Amendment to the Constitution of the United States which declares that no property "shall be taken for public use without just compensation."

BRIEF.

I.

The Act of the Legislature of Arkansas of March 25th, 1889, is unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States.

The plaintiff was not employed for any definite time. He was a "day laborer." The Court below so says (Rec., p. 10). That is, the plaintiff was hired only for a day. At the end of a day the company cannot *discharge* him, for he stands discharged by limitation of time. The most it can do is to refuse to employ him any longer. When he says here that he was *discharged*, he alleges what, being a day laborer, cannot possibly be true. He does not allege that he demanded payment when he says he was discharged or at any other time. Let us see what this statute erects into a penalty against a railway employer. The company hires a laborer for a day. The time is up at the end of the working day. He does not demand his pay, and the company does not pay him. Under such circumstances the statute as against railway companies enacts that, "as a penalty for such non-payment the wages of such servant or employe shall continue at the same rate until paid," if an action therefor shall be commenced within sixty days. It so enacts whether the servant be "discharged with or without cause."

And even if discharged for cause, the statute enacts that the unpaid wages at the contract rate, "without abatement or deduction," shall become instantly due

and shall be paid or the penalty denounced by the statute is incurred. Nay, further. This penalty is incurred for a refusal further to employ the servant or employe, although originally employed for a day only or by the day so long as the employer sees fit.

In *Leep vs. St. Louis, I. M. & S. Ry., 58 Ark., 407*, the Supreme Court of Arkansas said of this very statute: "In other words, it declares the wages shall be paid on such day, *notwithstanding they may not be due according to the contract until a day subsequent.*"

Let us look at the reverse side and see what provision is made in case the servant or employe is in the wrong. Suppose he refuses to be longer employed, or quits before the contract period expires, without cause. The statute not only does not give a corresponding remedy against him, but it provides on the contrary that if the company does not then and there instantly pay the full amount at the contract rate the penalty denounced by the statute against the company is incurred. It thus deprives the company of the right to recover damages for the servant's breach of the contract. But it gives the servant who is in the right not only the penalty (Sec. 1) but *damages in addition* "sustained by reason of such wrongful discharge" (Sec. 4). How is it possible to say that such an act does not "deny" to the company "the equal protection of the law?" With such a flagrant discrimination against the company and in favor of the employe how can it be said that they have equal rights before the law?

In the case of *Leep* against the *Iron Mountain Railway Company* the Supreme Court of Arkansas decided that this very Act of March 25, 1889, was so flagrantly violative of the aboriginal, basic and fundamental

rights of natural persons that as to them it was unconstitutional and void (58 Ark., 407). And the narrow, although transcendently important question on this record is whether an Act void for such reasons as to individuals is yet good as to corporations. In other words, whether as respects corporations the legislative power is unbounded and extends to the destruction or denial of such fundamental rights as in the case of natural persons renders the Act unconstitutional?

It is settled that corporations are "persons," within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Smyth vs. Ames, 169 U. S, 466, 522.
Gulf, Col. & Santa Fe Ry. vs. Ellis, 165 U. S., 150, 154.
Charlotte, C. & A. R. R. vs. Gibbs, 142 U. S., 386, 391.
Santa Clara Co. vs. Southern Pacific, 118 U. S., 394, 396.

The Act of March 25th, 1889, is clearly in violation of the Fourteenth Amendment and is unconstitutional under the ruling in

Gulf, Colorado & Santa Fe Ry. vs. Ellis, 165 U. S., 150.

The statute under review in the case last above cited was, as to the principles involved, precisely similar to the act now before this Court. It enacted: "That after the time when this act shall take effect any person in this State having a valid, *bona fide* claim for personal services rendered or labor done or for damages," &c., "against any railway corporation operating a railroad in this State" might present a verified claim, and that if the same was not paid within thirty days thereafter

he might institute suit therefor, and that upon obtaining judgment for the full amount he should be entitled to recover the amount of the claim, the costs and, in addition, a reasonable attorney's fee, not exceeding ten dollars.

Mr. Justice BREWER, delivering the opinion of this Court, said (p. 153):

"The Supreme Court of the State considered this statute as a whole and held it valid, and as such it is presented to us for consideration. Considered as such, it is simply a statute imposing a penalty upon railroad corporations for a failure to pay certain debts. No individuals are thus punished, and no other corporations. The act singles out a certain class of debtors and punishes them, when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors. They cannot appeal to the courts as other litigants under like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorney's fees of the successful plaintiff; if it terminates in their favor they recover no attorney's fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms. They must pay attorney's fees if wrong; they do not recover any if right; while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties, they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection. All this is obvious from a mere inspection of the statute."

In the case at bar an attempt is made to impose upon the railroad companies a penalty for not paying a discharged employe on the day of the discharge in case he recovers judgment for his wages, but the companies are not entitled by the Act in question to recover anything from the employe in case he fails in his suit. In this respect the two cases are on all-fours.

The opinion then proceeds to discuss the question of classification. On this point the Court said (p. 157):

"If it be said that this penalty is cast only upon corporations, that to them special privileges are granted, and therefore upon them special burdens may be imposed, it is a sufficient answer to say that the penalty is not imposed upon all corporations. The burden does not go with the privilege. Only railroads of all corporations are selected to bear this penalty. The rule of equality is ignored."

Discussing the validity of the Act as a police regulation this Court further said (pp. 158, 159):

"But a mere statute to compel the payment of indebtedness does not come within the scope of police regulations. *The hazardous business of railroading carries with it no special necessity for the prompt payment of debts. That is a duty resting upon all debtors, and while in certain cases there may be a peculiar obligation which may be enforced by penalties, yet nothing of that kind springs from the mere work of railroad transportation.* Statutes have been sustained giving special protection to the claims of laborers and mechanics, but no such idea underlies this legislation. It does not aim to protect the laborer or the mechanic alone, for its benefits are conferred upon every individual in the State, rich or poor, high or low, who has a claim of the character described. *It is not a statute for the protection of particular classes of individuals supposed to need protection, but for the punishment of certain corporations on account of their delinquency.*"

As to the legality of the Act as a proper means of enforcing the payment of small debts it was said (p. 159):

"Neither can it be sustained as a proper means of enforcing the payment of small debts and preventing any unnecessary litigation in respect to them, because it does not impose the penalty in all cases where the amount in controversy is within the limit named in the statute. Indeed, the statute arbitrarily singles out one class of debtors and punishes it for a failure to per-

form certain duties—duties which are equally obligatory upon all debtors; a punishment not visited by reason of the failure to comply with any proper police regulations, or for the protection of the laboring classes or to prevent litigation about trifling matters, or in consequence of any special corporate privileges bestowed by the State. Unless the legislature may arbitrarily select one corporation or one class of corporations, one individual or one class of individuals, and visit a penalty upon them which is not imposed upon others guilty of like delinquency, this statute cannot be sustained."

In reviewing cases bearing upon the questions before the Court a case decided by the Court of Appeals of Texas was commented upon as follows (p. 163):

"In San Antonio, &c., Railway vs. Wilson, 19 S. W. Rep., 910, the Court of Appeals of Texas held that a statute providing that in the event of a railroad company's refusing to pay its indebtedness to an employe within twenty days after demand, he could recover as damages twenty per cent. in addition to the amount due, was class legislation and unconstitutional. In the course of the opinion, after referring to those statutes allowing double damages 'for stock killed, the Court observed: **'But when we consider the relations of railway companies to their own servants, both as to contracts of employment and payment, we find a field in which special legislation has no right ordinarily to enter, and in which railways stand on the same footing with all other corporations or persons.'**"

Mr. Justice BREWER's opinion concludes (pp 165, 166):

"It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.

Tested by these principles, the statute in controversy cannot be sustained."

This decision, the latest pronounced by this Court upon the principles involved, we regard as conclusive of the case at bar.

The Supreme Court of Arkansas in its opinion (Tr., pp. 10-18) conceded that as an act relating to "persons," the Act of March 25th, 1889, is unconstitutional; but it held (Rec., p. 11) that corporations "are not entitled to all the rights of natural persons," and that the act in question is a lawful exercise of the right of the Legislature to amend the charters of railway corporations; and on this ground alone sustained the Act, and affirmed the judgment in the plaintiff's favor.

To this point we now turn our attention.

II.

The Act of March 25, 1889, cannot be sustained as constitutional and not violative of the Fourteenth Amendment to the Constitution of the United States on the theory that it is an exercise of the power granted by the Constitution of the State of Arkansas to the Legislature of that State to alter or amend the charters of corporations.

As we have said above, the Supreme Court of Arkansas upheld the constitutionality of the Act in-

volved in this case wholly upon the ground that it was amendatory of the general law relating to railway corporations—an alteration or modification of the franchises granted to railroad companies by that State.

This contention, in its essence, proclaims the law to be that railway companies, conceded to be "persons" within the meaning of the Fourteenth Amendment, may be deprived of rights, which other "persons" may exercise under the protection of that amendment; that the employes of railroad companies have rights which are denied to the employes of individuals or partnerships even though engaged in the same business, and performing the same duties. This is an astounding proposition, and yet it is the law of Arkansas, and will continue so to be until the decision of the Supreme Court of that State is reversed by this Honorable Court. The court rests its judgment sustaining the Act as to railway companies solely on the ground of the reserved power of the General Assembly under Section 6, Art. 12 of the Constitution of the State, quoted and discussed below.

The opinions of the Supreme Court of Arkansas in this and in the *Leep* case present this anomaly; they discuss the statute in question *as an independent act* and unanimously hold it to be unconstitutional as to all "persons" under the Fourteenth Amendment; they then shift their ground and viewing it as an alternation or amendment of the railroad laws of the State hold it, by a divided Court, to be constitutional as to corporations operating railroads. The result appears in the mutilated remains of the statute as promulgated in the opinion in the *Leep* case and copied in the opinion in this case (Rec. p. 10).

Examining the act itself, nothing whatever appears to show that it was intended to be, or in fact was, an amendment to the general railroad law of the State, or of any charter granted by the State to railway companies. The only intrinsic evidence of the purpose of the Legislature in passing the act is that furnished by its title—"An act to Provide *for the Protection of Servants and Employes* of Railroads." As it stands, and if interpreted in accordance with the wording of its title, it would apply to all railroads within the State of Arkansas whether owned and operated by corporations created by that State or by authority of the United States or other States, or whether operated by individuals or copartnerships; whereas, if the interpretation of the Supreme Court of Arkansas prevails, the act can apply in favor only of the employes of railroads incorporated by that State, since the Legislature of Arkansas has no power to amend the charters of other corporations, with the obvious result of seriously discriminating against the employes of foreign corporations, whether Federal or State, and against those of roads owned and operated by individuals or firms. Under the decision of the Supreme Court of Arkansas the employes of a railroad organized under the General Railroad Law of Arkansas would be able to avail themselves of the rights provided for in the act, but the employes of a private road built and owned by the proprietors of a coal mine over their own property and used to transfer coal from their mine to the same road would have no such rights. Under the decision of this Court in *Gulf, Colo., &c., Ry. Co. vs. Ellis, supra*, an act having such an effect would undoubtedly be unconstitutional.

The danger of sustaining statutes which, taken by

themselves and considering only their effect, are unconstitutional, by resorting to the right of a State to amend the charters of corporations or the general laws relating to corporations, is too apparant to call for comment. A door is in this way opened by which the beneficent provisions of the Constitution for the protection of persons and property—the bulwarks of equal rights and privileges—may be nullified and destroyed. If the judgment now under review shall be sustained by this Court, which is the guardian of the persons and property of all the inhabitants of the United States against inequality of rights, what may we not look for in the way of class legislation and discrimination? You may open the door, but once opened who shall be able to shut it? Any statute, however obnoxious to the Fourteenth Amendment, may be enforced, provided it can, by subtle reasoning or arbitrary ruling, be held to be an amendment or alteration of a franchise granted to a corporation. We deny that under the reserved power, especially the limited reserved power in the State of Arkansas, the General Assembly can destroy or deny rights otherwise protected by the Fourteenth Amendment of the National Constitution.

A STATE CANNOT, THROUGH ITS RESERVED POWER TO AMEND CORPORATE CHARTERS WHETHER GENERAL OR SPECIAL, WITHDRAW CORPORATIONS FROM THE GUARANTIES OF THE CONSTITUTION OF THE UNITED STATES.

In *The Railroad Tax Cases*, 13 *Fed. Rep.*, 722, Mr. Justice FIELD said (p. 754):

"In the second place, the state, in the creation of corporations, or in amending their charters, or, rather, in passing or amending general laws under which cor-

porations may be formed and altered, possesses no power to withdraw them when created, or by amendment, from the guaranties of the federal constitution. It cannot impose the condition that they shall not resort to the courts of law for the redress of injuries or the protection of its property; that they shall make no complaint if their goods are plundered and their premises invaded; that they shall ask no indemnity if their lands be seized for public use or be taken without due process of law, or that they shall submit without objection to unequal and oppressive burdens arbitrarily imposed upon them; that, in other words, over them and their property the state may exercise unlimited and irresponsible power. *Whatever the state may do, even with the creations of its own will, it must do in subordination to the inhibitions of the federal constitution.* It may confer, by its general laws, upon corporations certain capacities of doing business and of having perpetual succession in their members. It may make its grant in these respects revocable at pleasure; it may make the grant subject to modifications and impose conditions upon its use, and reserve the right to change these at will. But whatever property the corporations acquire in the exercise of the capacities conferred they hold under the same guaranties which protect the property of individuals from spoliation. It cannot be taken for public use without compensation. It cannot be taken without due process of law, nor can it be subjected to burdens different from those laid upon the property of individuals under like circumstances."

In County of Santa Clara vs. Southern Pacific R. Co., 17 Fed. Rep., 385, 398, he also said :

" With the adoption of the amendment the power of the States to oppress any one under any pretense or in any form was forever ended; and, henceforth, all persons within their jurisdiction could claim equal protection under the laws. And by equal protection is meant equal security to every one in his private rights—in his right to life, to liberty, to property, and to the pursuit of happiness. It implies not only that the means which the laws afford for such security shall be equally accessible to him, but that no one shall be subject to any greater burdens or charges than such as are imposed upon all others under like circumstances. *This*

protection attends every one everywhere, whatever be his position in society or his association with others, either for profit, improvement or pleasure. It does not leave him because of any social or official position which he may hold, nor because he may belong to a political body, or to a religious society, or be a member of a commercial, manufacturing or transportation company. It is the shield which the arm of our blessed government holds at all times over every one—man, woman and child—in all its broad domain, wherever they may go and in whatever relations they may be placed. No state—such is the sovereign command of the whole people of the United States—no state shall touch the life, the liberty or the property of any person, however humble his lot or exalted his station, without due process of law; and no state, even with due process of law, shall deny to any one within its jurisdiction the equal protection of the laws."

In the Sinking Fund cases, 99 U. S., 700, the same distinguished judge, in a dissenting opinion, stated the law on this point with notable clearness (p. 758):

"There have been much discussion and great difference of opinion on many points as to the meaning and effect of a similar reservation in statutes of the States, but on the point that it does not authorize any interference with vested rights all the authorities concur. Such was the language of Chief-Justice SHAW in the case cited from the Supreme Court of Massachusetts; and such is the language of Mr. Justice CLIFFORD in the cases cited from this court. And such must be the case, or there would be no safety in dealing with the government where such a clause is inserted in its legislation. It could undo at pleasure everything done under its authority, and despoil of their property those who had trusted to its faith Commonwealth vs. Essex Company, 13 Gray [Mass.], 239; Miller vs. The State, 15 Wall., 478; Holyoke Company vs. Lyman, *id.*, 500; See, also, Shields vs. Ohio, 95 U. S., 319, and Sage vs. Dillard, 15 B. Mon. [Ky., 349].

"*The object of a reservation of this kind in acts of incorporation is to insure to the government control over corporate franchises, rights and privileges which, in its sovereign or legislative capacity, it may call into existence, not to interfere with contracts which the corpora-*

tion created by it may make. Such is the purport of our language in Tomlinson vs. Jessup, where we state the object of the reservation to be 'to prevent a grant of *corporate* rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference,' and that 'the reservation affects the entire relation between the State and corporation, and places under legislative control all rights, privileges and immunities *derived by its charter directly from the State.*' (15 Wall., 454). The same thing we repeated, with greater distinctness, in Railroad Company vs. Maine, where we said that by the reservation the State retained the power to alter the act incorporating the company, in all particulars *constituting the grant to it of corporate rights, privileges and immunities;* and that "the existence of the corporation, and its franchises and immunities, derived directly from the State, were thus kept under its control.' But we added that '*rights and interests acquired by the company, not constituting a part of the contract of incorporation, stand upon a different footing*' (96 U. S., 499)."

United States vs. Union Pacific Ry. Co., 160 U. S., 1, Mr. Justice HARLAN (p. 33):

"It would not be competent for Congress, under the guise of altering and amending the act in question, to impose upon the railroad company duties wholly foreign to the objects for which it was created, or for which governmental aid was given. Neither could it, by such alteration or amendment, destroy rights actually vested, nor disturb transactions fully consummated. We may here, not inappropriately, repeat what was said in the Sinking Fund Cases, 99 U. S., 700, 718, 719, 720, that 'this power has a limit,' and 'cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made.'"

People vs. O'Brien, 111 N. Y., 1, RUGER, Ch. J. (p. 36):

"Whatever might have been the intention of the legislature, or even of the framers of our Constitution,

in respect to the effect of the power of repeal reserved in acts of incorporation, upon the property rights of a corporation, *such power must still be exercised in subjection to the provisions of the Federal Constitution.*"

And (p. 48):

"It would seem to be quite obvious that a power existing in the legislature by virtue of a reservation only could not be made the foundation of an authority *to do that which is expressly inhibited by the Constitution*, or afford the basis of a claim to increase jurisdiction over the lives, liberty or property of citizens beyond the scope of express constitutional power."

The power invoked by the Supreme Court of Arkansas to sustain its position is quoted in the opinion of that Court (Rec., p. 11), being section 6 of Article XII. of the Constitution of Arkansas, as follows:

"The General Assembly shall have the power to alter, revoke or amend any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may hereafter be created, whenever, in its opinion, it may be injurious to the citizens of this State; in such manner, however, that no injustice shall be done to the corporators."

A conclusive answer to this position is, that the Legislature never dreamed that in passing the Act of March 25, 1889, it was exercising this reserved power to amend the charter of the defendant railway company or the charter of railway companies generally. The Act does not profess to exercise any such reserved power. On the contrary, both by its title and its substance it negatives any such pretensions. It is in no sense an amendment of railway charters. It does not relate to any *franchise*. It includes contractors and sub-contractors for the building of any railway *or railway bridge*, thus showing that the Legislature was not proceeding on the ground

that it was amending railway charters. It is simply a statute imposing a penalty for the non-payment of a debt at a particular time.

Even if this statute were an exercise of a reserved right to amend the charter of the defendant company, it will be noticed that the reserved power is not unlimited. It must be exercised so as "*to do no injustice to the corporators.*"

Is it not reasonable to assume that this limitation was intended to secure to corporations the same rights and privileges as are given to other "persons"? In the light of this provision is not the construction of the Act in question by the Supreme Court of Arkansas an "injustice to the corporators"? Why was this limitation of the power to alter or amend charters fixed in the fundamental law of the State if equal rights with individuals were not to be accorded to corporations?

This Act is so invidious, so flagrantly unjust to railway companies (alone selected for arbitrary punishment for non-payment of a debt though payment be not demanded) cannot be sustained as a valid exercise of the reserved power to amend railway charters.

We make the above specific objection to the statute and invoke the Court's judgment upon it.

Moreover, the reserved power is confined to cases where, in the opinion of the General Assembly, the franchises to be altered, amended or revoked are "injurious to the citizens" of the State. Is there anywhere in this case any evidence that the franchises of railway corporations held to be altered or amended by the Act of March 5th, 1889, were injurious to the citizens of Arkansas? There only appears a forced assumption of such a claim grow-

ing out of the fact that the Court held the act to be an amendment to the railroad law of the State. Instead of basing the right to amend on the injurious character of the law to be amended, we have to infer such injurious character of the law as it stood from the fact that the Supreme Court of the State says the Act of March 25th is an amendment. It could not be an amendment unless the law amended was, in the opinion of the Legislature, injurious to the citizens of the State, so the Supreme Court of the State, in effect, says that, as it holds the statute to be an amendment, the amended law must, in the opinion of the Legislature, have been injurious to the citizens of the State. The assumption cannot, however, go so far as to include all the citizens of the State because, by the terms of the act, its operation is confined to such persons as are employes of the operators of railroads, and, by the decision under review, its operation is still further confined to such citizens as are employes of the railroad companies which are the creations of the laws of Arkansas, because that State has no power to alter or amend the charters of other corporations.

Again, it does not appear what particular part of the General Railroad Law of the State was amended by the Act of March 25th, 1889. Was there any provision of that law whereby the right of employes of railroad companies, in respect of the time of the payment of their wages, differed in any respect from the rights of the employes of other corporations or of any other employes? If so, why was not that particular part of the general law referred to in the amending act? Why was it not pointed out in the proceedings below or in the opinion of the State Supreme Court?

In this connection we call attention to the dissenting

opinion of BUNN, Ch. J., in *Leep vs. St. L. I. M. & S. Ry. Co., 58 Ark., 407*, in which he said:

"It will be observed that the act in question does not in terms refer to any other statute, and this being so, can any other statute be said to be amended by it?

"Section 23, Article 5, of the constitution [of Arkansas], is in these words, viz.: 'No law shall be revived, amended or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be reinstated and published at length.'

"Now, if a law referring to a previous law, by title only, is not to be considered as amendatory of it, how much more true is it that the subsequent law which does not refer even to the title of a former law is not amendatory to the existing or former law?

The prohibition contained in this section of the constitution was not meant as an idle saying—a mere flourish of high-sounding words—but was intended to subserve a great purpose—the protection of the citizen against surreptitious legislation. Nor has this Court nor the Courts of other States treated this and similar provisions as light and meaningless things. Beard vs. Wilson, 52 Ark., 290; Havis vs. Jefferson, 14 S. W. Rep. (Ark.), 1101; Watkins vs. Eureka Springs, 49 Ark., 131; Judson vs. Bessemer, 6 So. Rep., 267; Board Fire Coms. vs. City of Trenton, 22 Atl. Rep., 731; Board of Coms. vs. Aspen Mining Co., 32 Pac. Rep., 717.

From the decisions on the subject we gather this principle, that an act, as an independent law, may not be objectionable on constitutional grounds and yet as an amendment of some existing law it may be invalid. The rule is a reasonable one, because no law should be altered or amended without something appears in the amendatory act to give notice to the public of a change in the original law, while if the new act is intended as an independent act, the original act is not affected, and there is nothing to take notice of.

"This, perhaps, is enough to say on this part of the subject. The majority of the court treating the act in question as an independent act, would hold it unconstitutional for reasons assigned in the opinion, which reasons we think sound and incontrovertible. But the majority of the court, treating the act in question as amendatory of our general incorporation laws (the

court does not say which one, for there are two or more), holds it to be constitutional under the power reserved to the legislature, in the last sentence, Section 6, Art. 12 of the constitution, and I have endeavored to show that the act can have no place as an amendment, because it does not show a compliance with the constitution in the manner of its enactment as such amendment."

Unless defendant in error shows that the act under consideration is an amendment of some particular part of the General Railroad Law of Arkansas it cannot be sustained as being constitutional. If he claims that the act is merely a change in the common law rights of employes generally, but applicable only to those of railroad companies, the case falls within the ruling of *Gulf, Colorado & Santa Fé. vs. Ellis* as being a clear violation of the Fourteenth Amendment of the Constitution, and the judgment of the Court below must be reversed.

In the case of *Leep* vs. St. Louis, I. M. & S. Ry. Co., *supra*, the Supreme Court of Arkansas referred to and relied upon certain authorities, which we briefly review.

And first it is to be noted that the power to amend or alter corporate charters in the States in which these decisions were rendered, is limited only by the "pleasure" or "will" of the legislature, while in Arkansas, as we have seen *(ante*, p. 19*)*, the legislature can only alter or amend charters "whenever, in its opinion, *it may be injurious to the citizens of this State;* in such manner, however, that *no injustice shall be done to the corporators.*"

The case of the *Commissioners, &c., vs. Holyoke Water Power Company, 104 Mass., 446 (1870)*, obviously, on examination, has no favorable bearing whatever on the present case. It appears from the opinion of GRAY, J., in the case cited, page 450, that

"Every grant of a right to maintain a mill-dam across a stream where such [migratory] fish are accustomed to pass is subject to the condition or limitation that a sufficient and reasonable way shall be allowed for the fish, unless cut off by express provision or obvious implication in the grant. This is settled by a series of cases" (citing).

From 1830, by general legislation, it was enacted that every charter shall "at all times be subject to amendment, alteration or repeal at the pleasure of the legislature" (p. 451).

With this act in force, the Legislature granted to the Hadley Falls Company the power to build a dam across the Connecticut River, the charter not expressly exempting it from maintaining a dam without a fishway. By subsequent legislation the Commissioners were authorized to require dams to be constructed with fishways, and it was held that this legislation was constitutional as against the Hadley Power Company or its assignee. The whole conclusion is summed up by GRAY, J., in these words (461):

"Upon the whole case, taking into consideration the terms of the charter of the Hadley Falls Company, and the power of alteration, amendment and repeal previously reserved to the Legislature by the public statutes of the Commonwealth, we are unanimously of opinion that the Legislature has not surrendered or restricted its inherent power of regulating and protecting the fisheries."

Special reliance seems to be placed by the Supreme

Court of Arkansas on the case of *Shaffer and Munn vs. Union Mining Company, 55 Maryland*, 74 (1880.) A careful examination of this case will show that nothing necessarily decided in that case has any essential bearing on the present case. The plaintiffs Shaffer and Munn, being the assignees of choses in action from employes of the defendant the Union Mining Company, these assignments having been accepted by the defendant, brought suit against it to recover the amounts due on them. The only point decided, as to the right of the plaintiffs to recover, necessary for a decision, was whether the Act of 1880, Chapter 273, was intended to restrict and does restrict the powers of employes of the corporation so as to prevent their assigning what was due to them from the mining company to the plaintiffs; and, if it was so intended, was it competent for the Legislature to impose such restriction (p. 79)? The Court of Appeals of Maryland held that the Act of 1880 was not intended to restrict such power of assignment and reversed the judgment below, which held otherwise, and remanded the case for a new trial. The Court had no occasion to consider the powers of the Legislature to pass the Act of 1880 as respects duties which it imposed upon mining, manufacturing or railway companies as to the payment of wages in money, and all that is said by the Court on that subject is *obiter*. There is no discussion or decision in the case touching the right to the equal protection of the laws under the 14th Amendment.

The Supreme Court of Arkansas also seems to place special reliance upon the case of the *State vs. Brown & Sharpe Manufacturing Co.*, decided by the Supreme Court of Rhode Island, October 3d, 1892 (25 Atlantic Reporter, 246).

In that case the legislation of the State provided that all acts of incorporation "hereafter granted may be amended or repealed at the will of the General Assembly," and with that act in force the defendant manufacturing company was organized. Afterwards, March 4th, 1891, the Legislature passed Public Laws, Chap. 918, entitled "An Act providing for weekly payments to employes of corporations," which is as follows:

SECTION 1. Every corporation, other than religious, literary or charitable corporations, and every incorporated city, but not including towns, shall pay weekly the employes engaged in its business the wages earned by them to within nine days of the date of such payment, unless prevented by inevitable casualty; provided, however, that, if at any time of payment any employe shall be absent from his place of labor, he shall be entitled to said payment at any time thereafter on demand.

Section 2 makes a violation of the foregoing provisions penal.

Section 3 declares that the act should take effect May 1st, 1891.

This was the whole enactment. It will be seen that it applies by its terms to all corporations, except religious, literary and charitable corporations, also to incorporated cities, and assuming that the Court is right in holding that an act requiring such weekly payment to within nine days unless prevented by inevitable casualty was within the competency of the Legislature and did not contravene the 14th amendment, it has no essential bearing on the case at bar. Why? Because this act did not make the invidious distinctions made by the Arkansas statute. It applies to all corporations except those of an eleemosynary nature and small municipalities. The classification of

corporations to be effected by it is a proper one and within the rules as laid down by this Court, whereas the Arkansas statute now under review so clearly contemplates an illegal classification that the Supreme Court of Arkansas holds it to be unconstitutional on that account.

As to the cases cited in the opinion of the Court below in this case it is sufficient to say that, in the *Sinking Fund cases, 99 U. S., 700,* the act under consideration was admittedly an amendment to the charter of the company. Its title recited that fact (99 U. S., 710).

The statute construed in *Missouri Pacific Ry. Co. vs. Mackey, 127 U. S., 205,* was sustained as not being in itself a violation of the Fourteenth Amendment. It was not sustained as an amendment to the charter of the railway company.

The statute involved in *Barton Co. vs. Kansas City, Ft. S. & G. R. Co., 32 Fed. Rep., 722,* was sustained as being within the police power—not as an amendment of the corporation laws.

The learned Court below disposes of the decision in *Gulf, Colo. & S. F. Ry. Co. vs. Ellis,* above referred to and quoted, by saying that the statute in question in that case "was not an amendment, or in the nature of an amendment, of the charter of railroad corporations, and, if it was, it does not appear to have been made by virtue of any power reserved to the Legislature" (Tr., p. 17). We submit that there was nothing in the statute referred to which prevented its being considered an amendment of the railroad laws of

Texas, but the point seems to have been overlooked by the eminent counsel in the case and was not raised *sua sponte* by this Court.

The judgment of the Supreme Court of Arkansas should be reversed.

Respectfully submitted,

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